

Commercial Agency - Scope and Effect Commercial Dispute Resolution Fact Sheet

→ Background to the Regulations

The Commercial Agency (Council Directive) Regulations 1993 have a far ranging impact for both Agents and Principals. Nevertheless, they are little understood, and few businesses know of their existence, much less the effect that they have.

In essence, an agent is an intermediary involved in selling goods commercially on behalf of a principal. Such a relationship enables a principal, usually a company, to take advantage of an agent's local knowledge and established trade connections as well as saving the costs of having to establish its own selling operations in a given area.

The Regulations are designed to offer a level of protection to commercial agents, particularly as regards what is to happen on termination of the agency agreement. In the past, the law has tended to favour the principal. However, recent developments have signified a reversal of emphasis, with much of the favour now being afforded to the agent.

→ General Scope of the Regulations

- The Regulations apply to an agency arrangement whether oral or in writing but they do not apply to all types of agency arrangements and the scope of the Regulations has been limited to a certain extent
- The Regulations apply to the sale of goods only and do not apply to agents who deal in the supply of services. However, the sale and supply of gas and electricity has since been determined as being 'goods' for the purposes of the Regulations
- An agent can be an individual, a partnership or a company for the purposes of the Regulations, but they must be a 'self-employed intermediary' who has continuing authority to negotiate the sale or purchase of goods on behalf of the principal
- The inclusion of the word 'negotiate' would also seem to exclude those agents who have no authority to negotiate on price.

→ Impact of the Regulations on Termination

The Regulations contain provisions which may impact on various aspects of the agency agreement, but perhaps the most important is what an agent is entitled to receive upon termination of the agreement.

- An agent is entitled to commission on transactions concluded after his agency is terminated but only where those transactions are mainly attributable to the agent's efforts during the currency of the agency agreement
- An agent is entitled to compensation and / or an indemnity following termination of the agency agreement, and in some cases, irrespective of who actually effected the termination
- Compensation and / or Indemnity is payable irrespective of whether the principal has done anything wrong
- A principal may specify within the agency contract whether compensation or indemnity is payable to an agent on termination but both are not necessarily mutually exclusive.

→ Level of compensation payable

- The Regulations do not provide any clear guidance as to the amount of compensation which an agent is to receive
- An agent is deemed to have accrued goodwill in the business that is effected on behalf of the principal
- Case law has suggested that the compensation payable to an agent should reflect the value of the goodwill in the agent's business e.g. what a hypothetical buyer would be willing to pay the agent to acquire the agency
- Forensic valuation evidence is likely to be required to determine the compensation payable.

If you would like to know more about the impact of Regulations on your business please contact:



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